218). I am aware that these cases are cases in which the property concerned was land. The principle, however, appears to me to be the same whatever form the property takes.

The sums therefore on fixed deposit in the said firm in the names of the infants at the date of the deceased's death are, in my opinion, sums which are deemed to pass on the death of the deceased by virtue of the provisions of sub-section (iii) of section 5 of the Enactment and accordingly the petition is dismissed with costs.

Petition dismissed.

PONNUDURAI v. JAYATILEKA

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) May 13, 1965]

[K.L. — Federal Court Civil Appeal No. 108 of 1964]

Landlord and tenant — Recovery of possession — Reasonableness — Requirement of — Absence of — Claim for double rent — Control of Rent Ordinance, 1956. ss. 12(1)(f) and (n) and 22.

The plaintiff-appellant claimed recovery of premises belonging to him and occupied by the defendant-respondent and for double rent. The plaintiff was a clerk who had reached the age of 55 years and the ground relied was that he required the premises for his own occupation. The magistrate made an order for possession and for payment of double rent in favour of the plaintiff but on appeal this order was set aside ([1965] 1 M.L.J. 131). On further appeal to the Federal Court,

Held: (1) the magistrate erred in making the order for double rent;

(2) the requirement of reasonableness for an order to be made under section 12(f) of the Control of Rent Ordinance was absent in this case and therefore the application should have been dismissed by the magistrate.

Case referred to:—

(1) *Ong Keng Huat* v. *Shaw and Shaw Ltd.* [1957] M.L.J. 46.

FEDERAL COURT.

L. P. Thean for the appellant.

R. Chelliah for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: In this case the plaintiff, who is the landlord of premises No. 17 Jalan Inai, Kuala Lumpur, sued the defendant, who is his tenant, for recovery of possession of the premises and for double rent as from the 1st May 1963 up to the date of recovery of possession. The action was heard in the magistrate's court, Kuala Lumpur and on the 16th May 1964 the learned magistrate made an order that the defendant should deliver up possession of the premises to the plaintiff on the 30th November 1965 and in the meantime pay double rent as from the 1st June 1964.

The plaintiff thereupon appealed to the High Court against the magistrate's order, asking, *inter alia*, that the order be varied and that the plaintiff be given immediate possession of the premises. The defendant for his part lodged a cross-appeal which in effect asked that the magistrate's order be set aside.

The appeal and cross-appeal came on for hearing before Ong J., who, on the 4th November 1964, dismissed the appeal, allowed the cross-appeal and set aside the magistrate's order. The plaintiff now appeals to this court against the decision of Ong J.

So far as the claim for double rent is concerned, it is clear that the learned magistrate erred in making the order that the defendant should pay double rent to the plaintiff from the 1st June 1964. The fact that the learned magistrate so erred can be seen from the case of *Ong Keng Huat* v. *Shaw & Shaw Ltd.*[1] and the provisions of section 22 of the Control of Rent Ordinance, 1956. Counsel for the plaintiff has stated that he is not supporting the order for payment of double rent.

The facts of the case, so far as they are relevant to this appeal, may be briefly stated. The plaintiff is a clerk in the Accountant-General's Office. His total emoluments are $1,078 per mensem. He was 55 years of age at the time of the hearing in the magistrate's court and is due to retire on pension in 1969. On the 8th August 1960 he purchased the premises No. 17 Jalan Inai, Kuala Lumpur at the price of $20.000. These premises, to which the Control of Rent Ordinance, 1956 applies, were then and are still occupied by the defendant as tenant.

The defendant is a teacher in the Methodist Boys' School, Kuala Lumpur. His total emoluments are $1,185 per mensem. He was 57 years of age at the time of the hearing in the magistrate's court and is due to retire at the age of 60. He has been the tenant of No. 17 Jalan Inai since November 1938. For the past three years he has been suffering from hypertension and after-effects of coronary thrombosis and amoebic hepatitis. He is at liberty to retire now, if he wishes to do so, and he would in that event receive a lump sum of about $60,000 from the Employees' Provident Fund, but because he would not draw any pension he has decided to continue to work as a teacher in order to support his children.

The statement of claim in the action was so drawn that the plaintiff was able to rely on the grounds set out in paragraphs (f) and (n) of section 12(1) of the Control of Rent Ordinance, 1956. The relevant provisions of the Ordinance are as follows:—

"12. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —

(f) where the owner of the premises reasonably

requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust, and —

(i) there has been no change by purchase in the ownership of the premises since the fifteenth day of February, 1942; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice:

Provided that an order or judgment shall not be made or given on any ground specified in this paragraph if the court is satisfied that, having regard to all the circumstances of the case, including the question whether other accommodation is available for the owner or the tenant, greater hardship would be caused by granting an order or judgment than by refusing to grant it:

(n) in any case, whether falling within any of the preceding paragraphs or not, where the court considers it reasonable that such an order or judgment be made or given and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect."

It should be mentioned at this stage that evidence was given at the hearing that by a new regulation the age of retirement for officers in Government service had been extended from 55 to 60 as a temporary measure. The plaintiff could therefore continue in Government service until he attained the age of 60 so long as the new regulation remained in force. There was no evidence whatsoever that Government had any intention of withdrawing the new regulation.

In making the order which he did, it is clear that the learned magistrate relied on two assumptions, one affecting the plaintiff and the other affecting the defendant.

As to the plaintiff, the learned magistrate made the following observations:—

"I say that the plaintiff had discharged the onus that he reasonably required the premises for himself because the court believed that the plaintiff had bought the house to reside there, though it could not believe that part of the story stating that he wanted to use the premises immediately.

Further, he is approaching the age of retirement and if the new regulation extending the age of retirement at the age of 60 years is withdrawn he would retire sooner and then he would certainly require the premises for himself since he would not be in a position to pay a high rental with the money he would be receiving by way of pension. It is to that foreseeable future that the court directed its mind when it gave judgment for possession after 30th November 1965."

With regard to the defendant, the learned magistrate said:—

"On the assumption, he would be forced to retire at the end of the year, he would require a minimum period of one year to get the money from the E.P.F. and build a house of his own. The defendant would then be able to move to the new premises with the minimum hardship to himself and his family. There would then be lesser hardship to the defendant than the plaintiff, for there would be security of tenancy and no problem of accommodation which may cause deterioration in his health. It is with these ideas in mind I gave order for eviction after 30th November 1965."

In his judgment, Ong J., after referring to the two assumptions and quoting two passages from the learned magistrate's grounds of judgment, expressed himself as follows:—

"I need hardly observe that the possibility of the landlord's retirement age being advanced is too remote to be foreseeable, nor is there on the part of the tenant, any evidence of his intention to retire if he can possibly help it. Consequently, and with reluctance, I am compelled to hold that the ground on which the issue of reasonableness rests is erroneous because such a conclusion was based on false premises."

I find myself in complete agreement with the observations of Ong J. It follows that, in my opinion, as the necessary element of reasonableness is absent in this case, no order for recovery of possession of the premises should have been made by the learned magistrate.

In the circumstances, it is in my view unnecessary to deal with the question of other accommodation or suitable alternative accommodation.

I would dismiss the appeal with costs.

Thomson L.P. and **Barakbah C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *Shook Lin & Bok; R. R. Chelliah.*

LEE BANG v. NADZRI

[O.C.J. (MacIntyre J.) May 31, 1965]

[Ipoh — Civil Suit No. 147 of 1964]

Practice and Procedure — Costs — Taxation — Getting up fee — R.S.C. 1957, 2nd Schedule, item 80.

Practice and Procedure — Costs — When entitled to.

Where the proceedings in an action have reached a stage when a hearing in open court is inevitable the legal advisers of the parties are entitled to be in readiness for the hearing and must be compensated for the work done irrespective of whether there was actually a hearing in open court or not.

On April 6, 1964 the plaintiff filed a writ in the High Court at Ipoh against the defendant claiming damages for personal injuries arising out of a motor accident. The writ was duly served and the defendant failing to enter appearance the plaintiff took out a motion for judgment in default of appearance returnable on July 20, 1964. The defendant entered appearance on July 16, 1964 and paid $4,000 into court in satisfaction of the plaintiff's claim. Consequently when the motion came on for hearing on July 20, 1964 an order was made on the motion but the court ordered that the costs to be costs in the cause.

On the taxing of the plaintiff's bill of costs the senior assistant registrar disallowed the claim for $500 for getting up in respect of the motion for judgment and also the claim for $850 for getting up generally. On appeal to the judge in chambers,

Held: (1) a getting up fee cannot be charged twice once for getting up on the motion and again for getting up the case generally;

(2) the case must be remitted to the senior assistant